IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 201 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

ROHIT MILLS LTD.

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Appearance:

1. INCOME TAX REFERENCE No. 201 of 1989
MS. MONA BHATT, Advocate for MR MANISH R BHATT
Advocate for the Revenue
MR MI SHAH, Advocate for MR JP SHAH
Advocate for the Assessee

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CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 09/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred the following three questions, of questions No.1 and 3 were already referred earlier under Section 256(1) of the Income Tax Act, 1961 and because the High Court directed for referring the question No.2, it referred that question by this reference alongwith the earlier two questions :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the claim of the assessee for deduction of Rs.12,605=00 being the bank guarantee commission as revenue expenditure?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the claim of the assessee in full u/s 35B for Rs.2,40,977=00 paid to the Indian Cotton Mills Federation?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the addition of Rs.5,43,500=00 from the assessment of the assessee?"

2. The questions No.1 and 3, were already referred earlier by the Tribunal. While making the present reference, in paragraph 6, the Tribunal has mentioned the fact that the questions No.1 and 3 were already referred to the High Court under Section 256(1) by statement of case dated 6-9-1983. These questions No.1 and 3, which were referred by the Tribunal, were the subject matter of I.T. Reference No.46 of 1984 which came to be decided by a Division Bench of this Court on September 30, 1998. Since these two questions, namely the questions No. 1 and 3, which are again referred, have already been answered by a Division Bench of this Court in case of C.I.T. v. Rohit Mills, reported in 236 ITR 436, we are not called upon to consider them again.

3. This Reference, therefore, survives only as regards the question No.2 relating to the claim of the assessee under Section 35B of the Act for a sum of Rs.2,40,977=00 paid to the Indian Cotton Mills

Federation. The Tribunal has held in paragraph 18 of its order that the assessee was entitled to the said claim in light of the decision in the case of C.I.T. v. Piramal Spinning & Weaving Mills Ltd., reported in 124 ITR 408. In C.I.T. v. Piramal Spinning & Weaving Mills Ltd., while considering the question as to whether the Tribunal was justified in holding that the assessee was entitled to weighted deduction under Section 35B of the Act, at 20% of the amount in question, the High Court held that the percentage of sum which should be allowed to the assessee by way of weighted deduction was a question of estimation to be arrived at on the facts and the materials on the record and did not give rise to any question of law for reference to the High Court. It is, therefore, difficult to appreciate the observation of the Tribunal that it was upholding the relief in light of the decision of the Court in case of C.I.T. v. Parimal Spinning & Weaving Mills Ltd., reported 124 ITR 408, the facts of which are not referred by the Tribunal in its order, nor is the aforesaid decision taken by the High Court referred. The subject matter of the aforesaid question No.2 came up for consideration before the Supreme Court in light of the provisions of section 35B(1)(b) of the Income Tax Act, 1961 in case of C.I.T. v. Hero Cycles Pvt. Ltd., reported in 228 ITR 463, and the Supreme Court has held that the contribution to the Indian Cotton Mills Federation did not fall within any of the sub-clauses of section 35B(1)(b). It was held that the contribution might be for the promotion of export generally, but this sort of contribution to a general body or Chamber of commerce could not qualify for weighted deduction. In this view of the matter, the question No.2 is fully covered by the decision of the Supreme Court in case of C.I.T. v. Hero Cycles Pvt. Ltd. (supra).

6. We therefore, hold that the Tribunal committed an error in allowing the claim of the assessee for Rs.2,40,977=00 paid to the Indian Cotton Mills Federation, under section 35B of the Act and answer the question No.2 in the negative in favour of the Revenue and against the assessee. The Reference stands disposed of accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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